



**Keystone XL Oil Pipeline Project  
US Component**

**Services Contract**

**No. 6414**

effective  
December 15, 2008

between

**TransCanada Keystone Pipeline, LP,  
by its general partner, TransCanada Keystone Pipeline GP, LLC**

and

**ENTRIX, Inc.**

Dept. of State, A/GIS/IPS, Sheryl Walter, Dir.

( )Release (X)Excise ( )Deny

Date 2/23/2012 Exemption B4, B6

Review Authority C. Lohiguera

for

**Provision of Department of State Environmental Impact Statement  
Third-Party Contractor Services for the Keystone XL Pipeline Project**

## TABLE OF CONTENTS

1	Scope of Work .....	1
2	Schedule.....	1
3	Representatives.....	2
4	Quality of Work .....	2
5	Examination by Contractor of Contract Documents .....	2
6	Contractor's Performance .....	3
7	Independent Contractor .....	3
8	Conflict of Interest .....	3
9	Prohibitions .....	4
10	Safety and Environment.....	4
11	Resources.....	4
12	Remedy of Defects .....	4
13	Indemnification of Company.....	4
14	Confidentiality .....	5
15	Covenant Not To Testify .....	6
16	Reports .....	6
17	Compensation.....	6
18	Royalties, Permits, Licenses and Taxes .....	6
19	Invoices, Payments and Reporting .....	6
20	Audits .....	7
21	Insurance .....	7
22	Change Orders .....	9
23	Delays .....	9
24	Termination by the Company .....	10
25	Default of the Contractor .....	11
26	No Waiver .....	12
27	Remedies of Company .....	12
28	Assignment .....	12
29	Dispute Resolution .....	12
30	Notices .....	13
31	Governing Law .....	14
32	Conflict of Law .....	14
33	Priority of Documents .....	14
34	Entire Agreement .....	14
35	Time .....	14
36	Other Documents .....	14
37	Headings .....	15
38	Survival Provisions .....	15
39	Mutually Prepared Contract .....	15
40	Amendments .....	15
41	No Third Party Beneficiaries .....	15
42	Successors and Assigns .....	15
43	Counterparts .....	15
44	Ownership of Work .....	15

**KEYSTONE XL PROJECT - SERVICES CONTRACT NO. 6414**

THIS SERVICES CONTRACT made as of the 15<sup>th</sup> day of December, 2008

BETWEEN:

**TransCanada Keystone Pipeline, LP**  
a limited partnership formed under the laws of Delaware,  
by its general partner,  
**TransCanada Keystone Pipeline GP, LLC**  
a limited liability company formed under the laws of Delaware

(herein TransCanada Keystone Pipeline, LP  
is referred to as "the Company")

- and -

**ENTRIX, Inc.**  
a Corporation formed under the laws of Texas,  
(herein the "Contractor")

WITNESSETH:

**1 Scope of Work**

- 1.1 The Contractor shall prepare an Environmental Impact Statement ("EIS") and related documents and services for the Keystone XL Project, all as more particularly set forth in the Scope of Work attached as Schedule "A" (the "Work"). All Work is to be performed under the direction of the Department of State ("DOS").
- 1.2 The Contractor shall perform the Work in accordance with the terms and conditions contained herein and in the following exhibits attached hereto and made part hereof:

Schedule "A" - Scope of Work

Schedule "B" - Compensation

Schedule "C" - Rules and Guidelines

(sometimes collectively, the "Contract"). Where the Contract describes the scope of Work in general terms, but not in complete detail, it is understood and agreed that the scope of Work includes any incidental work which can be reasonably inferred as required and necessary to perform the Work in accordance with this Contract.

**2 Schedule**

- 2.1 The Contractor shall commence the Work on or about December 15, 2008 or the date on which the Contract has been formally executed by the Contractor and delivered to the Company and shall complete the Work in accordance with the DOS mandated schedule. If necessary, DOS will approve revisions to deliverable due dates. Any request for extension of time must be presented at least 5 days prior to the due date.

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3 **Representatives**

- 3.1 The representative of the Company (the "Company Representative") shall be \_\_\_\_\_ for such other person or persons as may be designated in writing to the Contractor by the Company.
- 3.2 The representative of the Contractor (the "Contractor Representative") shall be \_\_\_\_\_ for such other person or persons as may be designated in writing to the Contractor by the Company. The Contractor Representative shall have full authority to act on behalf of the Contractor for all purposes in connection with this Contract. The Contractor shall provide to the Company complete contact information for the Contractor's Representative.

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4 **Quality of Work**

- 4.1 The Contractor represents, warrants and covenants that it and any subcontractors providing labor, services, supplies or equipment related to the Work, and the employees and agents of the Contractor and each subcontractor, are fully and professionally licensed, certified, registered, qualified, staffed and equipped to perform the Work in accordance with the terms and conditions of this Contract within the time period and for the price specified in this Contract. The Contractor further represents, warrants and covenants that in the performance by the Contractor and its subcontractors, and the employees and agents of each of them of the obligations and Work hereunder, such performance and Work shall:

- (a) be of a quality specified by the DOS;
- (b) be acceptable to the DOS Project Manager;
- (c) be done in a good and workmanlike manner in accordance with generally recognized professional standards; and
- (d) comply with all applicable laws, orders, regulations, ordinances, standards, codes and other rules of all governmental authorities acting within their power including, but not limited to, all wage, labor, non-discrimination, health, safety, security and environmental laws and regulations.

The Contract further represents, warrants and covenants that it has or will obtain at the Contractor's expense, prior to commencing the Work, authority to do business in the location(s) in which the Work are to be performed, including appropriate certifications, permits or licenses or visas (generally, and specifically those required for the Work, if any), to the extent required by any applicable law or governmental authority having jurisdiction over such matters. The Contractor shall, when requested, promptly provide the Company with written evidence documenting the Contractor's compliance with this Article 4.

If the Contractor becomes aware of any divergence between any applicable law, order, regulation, rule or other governmental authorization and the Scope of Work set forth in Schedule "A" or any other provision of this Contract, it shall immediately notify Company of the nature and extent of the divergence and its proposal for addressing such divergence.

5 **Examination by Contractor of Contract Documents**

- 5.1 The Contractor represents that it has had an opportunity to negotiate the terms and conditions of this Contract and examine, and has carefully examined, all of the Contract documents and that it has, before commencing the Work, fully acquainted itself with the circumstances and conditions pertaining to the Contract and the Work and has made all inquiry and investigation essential to a full understanding of the potential conditions, circumstances and difficulties which may be encountered in performing and completing the Work and that anything in this Contract or any representations made or furnished by the Company notwithstanding, the Contractor shall complete the Work for the Contract Price set forth in Schedule "B".

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## 6 Contractor's Performance

- 6.1 The Contractor agrees to manage, supervise, perform, complete, and warranty the Work in accordance with, and to be bound by, all of the terms and conditions of this Contract and any and all Change Orders. Except as otherwise specified in writing by the Company, the Contractor shall furnish all required and requested personnel, management and supervision, office and technical space, software, hardware, equipment, tools, supplies, materials and other facilities or things of any nature necessary to manage, supervise, perform and complete the Work.
- 6.2 The performance of the Work or any part thereof will be subject to direction by the DOS Project Manager. Any contact between the Company and the Contractor (other than billing and payment) shall be routed through the DOS staff.
- 6.3 The conduct of the Contractor will adhere to a high level of professional ethics and standards, as is appropriate for performing the Work, and also avoid any conflicts of interest that may interfere with the Work.
- 6.4 In performing the Work, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age or handicap, and will comply with all provisions of Executive Order 11246 of September 24, 1965 and any successor order thereto, to the extent that such provisions are applicable. This Paragraph shall be applicable to any subcontractors retained by the Contractor.

## 7 Independent Contractor

- 7.1 The Contractor shall be an independent contractor and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Contractor and the Company. The Contractor shall have control over and be responsible for the means, methods, techniques, procedures, safety and security for performing the Work. Neither the Contractor nor subcontractors or the employees and agents of the Contractor and its subcontractor shall be or deemed to be employees, agents or subcontractors of the Company. The Contractor shall be fully responsible for any act or omission of the Contractor or its subcontractor or any person, directly or indirectly, employed or otherwise engaged by the Contractor or its subcontractor.

## 8 Conflict of Interest

- 8.1 The Contractor represents, warrants, covenants and agrees that:
- (a) It is not aware of the existence of any relationship, family, business, contractual or otherwise, between itself, its principals, officers or employees and the Company, including but limited to subsidiaries, affiliates and joint ventures of the Company, their directors, officers or employees;
  - (b) It will not perform any services for or enter into any contract with others that may conflict with its contractual, professional, equitable or other obligations to the Company, its subsidiaries, affiliates and joint ventures without first obtaining the written approval of the Company and DOS; however, it is recognized by all parties that in the normal course of its business, the Contractor will engage in business development activities that may result in contracted work with other entities engaged in petroleum or natural gas transportation, and that such activities do not require notification of and written approval from the Company and DOS; and
  - (c) It will not use for the benefit of itself (other than with regard to the performance of the Work) or others, or make available, provide access to or reveal to others any information or knowledge, not otherwise in the public domain about the business and operation of the Company its subsidiaries, affiliates and joint ventures without first obtaining the written approval of the Company and DOS.

9 **Prohibitions**

- 9.1 The Contractor shall require all of its employees and the employees of its subcontractors to observe the Company's rules and regulations, including those relating to badges, parking, entrance facilities, safety, security, firearms, drug/alcohol and smoking. The use, possession, sale, manufacture or distribution by any person, of alcohol, illegal drugs, intoxicant or any prescription medicine (other than prescription medicine that does not cause impairment) or firearms, is strictly prohibited on the Company property, the Keystone XL Project site and at any location where the Work associated with this Contract, including any vehicle or equipment, is being performed.

10 **Safety and Environment**

- 10.1 In addition to the requirements set forth in Article 6, in performing the Work, the Contractor shall observe and comply with all of the Company's security, safety and environmental rules and regulations, including Company's Rules and Guidelines for Contractors, which are attached as Schedule "C" and the Contractor shall ensure that the Contractor's employees, subcontractors, agents and the employees of such subcontractors or agents, observe and comply with same.

11 **Resources**

- 11.1 The Contractor shall obtain written approval of the DOS and Company prior to assigning personnel to or reassignment of personnel from the Work. Such request for assignment shall specify the position's proposed classification, responsibilities and authorities, and shall detail the skills, experience and capabilities of the candidate evidencing his/her ability to competently perform the duties assigned. Removal or reassignment of such approved personnel from the Work shall only be with the prior written approval of the DOS and the Company.

12 **Remedy of Defects**

- 12.1 In addition to its obligation to indemnify the Company as provided for in Article 13 and the Company's other remedies, the Contractor, at no cost to the Company, shall provide or pay the costs and expense of work and services as may be necessary to remedy any defect or deficiency in the Work caused by the Contractor's failure, error, negligence or omission, or by any failure on the part of the Contractor to perform and complete the Work in accordance with the provisions of this Contract.

13 **Indemnification of Company**

- 13.1 The Contractor shall indemnify, defend and save harmless the Company, its directors, officers, employees, agents, servants and invitees (collectively the "Indemnified Parties") from any and all liens, actions, causes of action, suits, proceedings, judgments, claims, losses, costs, damages, fines, penalties and expenses of whatever nature, including, but not limited to, reasonable fees and charges of attorneys and court and arbitration costs (collectively "Losses") which may be brought against or suffered by the Indemnified Parties or which the Indemnified Parties may incur, sustain or pay arising out of or in connection with any claim or cause of action in respect of:
- (a) any lien or claim against the Company or the Keystone XL Project arising out of or relating to labor, services, equipment, materials or supplies related to the Work;
  - (b) any fine, penalty, sanction imposed or assessed by any governmental authority;
  - (c) the injury or sickness, disease or death of any person or loss of or damage to any property, including the Company's property, in any way sustained or alleged to have been sustained, from the breach or non-compliance with any term or provision of this Contract, inaccuracy or incompleteness of any representation or warranty herein, act, omission, default or representation, negligence, reckless misconduct or willful misconduct of the Contractor or any of its directors, officers, employees, agents,

servants invitees, contractors, subcontractors, or any other party directly or indirectly for whom the Contractor is responsible in law or in any way incidental to the Work or this Contract;

- (d) any taxes and third party obligations, payable by such party as a result of this Contract, or for any related contributions and penalties imposed on the Contractor by any governmental or other agency having jurisdiction; or
- (e) any claim or suit for alleged infringement of any patent, industrial design, license, copyright or trademark resulting from or arising in connection with the manufacture, sale, use or other disposition of the Work. If any of the Work constitutes an infringement, the Contractor shall, in addition to its other obligations under this Contract, at its own expense, and as directed by the Company, either procure for the company the right to continue using such Work without liability for such infringement, or modify or replace such Work with non-infringing Work accomplishing the same purpose as the replaced Work.

13.2 Neither party shall be liable for consequential, incidental, special, indirect, exemplary or primitive damages, including but not limited to downtime, loss of product, or loss of use, from any cause whether based in contract, tort, strict liability or otherwise.

13.3 The Contractor's total liability, in aggregate, to the Company for obligations in Article 13.1 above shall not exceed amounts equivalent to the Contractor's insurance coverages specified in Article 21, including the amount of any deductible specified in the Contractor's insurance policies.

#### 14 Confidentiality

14.1 For the purposes of this Contract, "Confidential Information" means the all documents, information and data, written or oral, furnished by the Company to the Contractor or resulting from or coming to the knowledge of the Contractor in performing the Work or otherwise obtained (including but not limited to all contracts, financial information, environmental reports, environmental reports, land and lease information, technical and economic data, knowledge, know-how and related information such as plans, maps, drawings, field notes, sketches, photographs, specifications, models, reports, improvements, inventions, processes, formulae or technology and marketing terms and arrangements) or which is or may be either applicable to or related in any way to the Keystone XL Project or the assets, business or affairs of the Company or its affiliates, together with all analyses, compilations, data, studies or other documents prepared by the Contractor contained or based upon, in whole or in part, information acquired by the Contractor in providing the Work or during the term of the Contract.

14.2 The Contractor agrees and acknowledges that the Confidential Information:

- (a) is the sole property of the Company and shall be returned to the Company at the earlier of the Company's request, or upon completion of Work;
- (b) Shall not be used for any purpose whatsoever other than for the purpose of performing the Work; and
- (c) Shall not without the Company's prior written consent be disclosed or made available or accessible to any person other than, to the extent required, the DOS or other agencies as directed by the DOS, the Contractor's employees, agents or subcontractors who have a need to know the Confidential Information or any part thereof for purposes of performing the Work in accordance with this Contract. If such Confidential Information is disclosed to any of the Contractor's employees, agents, or subcontractors, such persons shall be informed at the time of disclosure of its confidential nature and the terms of this Article 14 and, except in the case of employees of the Contractor, shall agree in writing to be bound by its terms. Contractor shall keep and provide the Company (at its election) a list of all persons and individuals that have been provided with any Confidential Information and copies of agreements by such persons to be bound to confidentiality.

14.3 The Contractor's obligations as set forth in this paragraph shall not apply to any data which is legally in the public domain, or known to the Contractor prior to commencing the Work, becomes known to the Contractor for an unrestricted source or is required to be disclosed by law, government regulation or court order. The Contractor shall receive information from the Company only as it is filed with the DOS.

- 14.4 Money damages would not be a sufficient remedy for any breach of the above provisions of this Article 14 and the disclosing party shall be entitled to seek specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for any such breach but shall be in addition to all other remedies available at law or in equity.

15 **Covenant Not To Testify**

- 15.1 The Contractor covenants and agrees not to voluntarily testify on any matter relating to the Work before any regulatory agency, governmental authority or court of law in opposition to any application by the Company, its affiliates, subsidiaries or partnerships, to construct operate and maintain the Keystone XL Project or perform the work to which the Work hereunder relate or pertain. This paragraph in no way abrogates the Contractor's professional and ethical duty to analyze alternatives to the Keystone XL Project as directed by the DOS Project Manager or to answer any kind of judicial, quasi judicial or administrative subpoena.

16 **Reports**

- 16.1 The Contractor, as required by this Contract and otherwise when requested in writing by the Company, shall furnish written reports containing project activity status and associated costs to the Company setting forth in reasonable detail this information. However, other than monthly invoices and supporting documentation, the Contractor shall not release any environmental documents or related studies, reports, or other materials, prepared under and discussed in the Request for Proposals, to the Company or any entity (other than DOS staff and cooperating agencies as identified by the DOS staff) without the prior written consent of the DOS Staff.

17 **Compensation**

- 17.1 For satisfactory performance of the Work hereunder, the Company shall pay the Contractor at the rates and under the terms set forth in Schedule "B". Such rates shall include the cost of all labor, materials, equipment and services (unless otherwise stated herein) and all other direct and indirect costs. However, the total compensation payable to the Contractor hereunder shall not exceed \_\_\_\_\_ of lawful money of the United States of America without the prior written consent of the Company.

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18 **Royalties, Permits, Licenses and Taxes**

- 18.1 The Contractor shall pay all royalties, permit and license fees and applicable sales use, excise and other similar taxes imposed by any lawful authority on or relating to the Work, labor, equipment (including the cost of all rental equipment) and materials to be furnished by it. The Contractor shall be responsible for and pay the costs of all contributions, assessments and deductions for workers compensation, labor unions or associations, welfare funds and for taxes and other payments for unemployment funds, unemployment benefits, disability benefits, social security benefits, and old age benefits and pensions which are or may be required under any present or future law or laws of any lawful authority upon or in respect of salaries, wages and other compensation of personnel employed in the performance of the Work, together with all other taxes imposed by any lawful authority. The Contractor shall indemnify, defend and hold harmless the Company from any and all claims, penalties, interest and costs and any of the same which may be made or assessed against the Company in respect of the Contractor's obligations under this Section 18.1.

19 **Invoices, Payments and Reporting**

- 19.1 The Contractor shall invoice the Company in duplicate within 10 days of the end of each month for the Work performed during such month. Each invoice shall be dated and numbered and shall describe the Work rendered, the date rendered and the name of the person(s) rendering the Work, with the charges for each category of Work shown separately in accordance with the categories of Work and charges described and defined in Schedule "B", together with such documentation as the Company deems reasonably necessary to substantiate and verify the charges shown on the invoice. Where specifically provided for in Schedule "B,"

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expenses shall be supported by invoices and vouchers or, with the Company's written consent, photocopies or a brief statement explaining such expenses.

- 19.2 Within 30 days of receipt and approval of an invoice, the Company will pay the Contractor the undisputed amount of each approved valid invoice.
- 19.3 The Company retains the right to refuse to pay any invoice unless the Contractor provides at the Company's election a written release, waiver or estoppel certificate (the form and substance of which is acceptable to the Company) from the Contractor and/or any or all of its subcontractors or agents specific by the Company releasing, waiving or certifying that as of the time of the release, waiver or certificate they have been fully paid for all Work performed, and have no lien claim or basis upon which to assert any claim connected with, arising out of or related to the Work of the Keystone XL Project except for authorized retentions. For any invoice amount not approved or paid by the Company, the Company shall furnish the Contractor with a statement of the charges, if any, which the Company has not approved and paid, together with the reasons therefor.
- 19.4 Unless otherwise directed by the Company, prior to the payment of the first billing hereunder, the Contractor shall furnish to the Company, at its own expense, proof that it has obtained the applicable licenses, permits and other authorization(s) to transact business for each location in which the Work is being performed or the Keystone XL Project is located and the appropriate sales tax permit, or other applicable permits, licenses and visas required by the Contractor to perform the Work, or evidence satisfactory to the Company that same are not required by law. In the event that the Contractor fails to furnish the documentation required in this Article, payments due to the Contractor may be withheld by the Company, without payment of interest, until such documentation is furnished.
- 19.5 Notwithstanding anything herein to the contrary, all Work performed by, through or for the Contractor shall be delivered to the DOS free and clear of all labor, material and construction liens, security interests, charges and any other encumbrances whatsoever, which might be occasioned by or permitted to be created by the Contractor, its employees, subcontractors or agents. The Contractor shall promptly pay or discharge, and discharge of record, or provide security reasonably acceptable to the Company with respect to, any such lien against the Company or the Keystone XL Project or other charge which, if unpaid, might be or become a lien. The Contractor shall immediately notify the Company of the assertion of any lien. Upon the Contractor's failure to promptly pay, discharge or provide security for any Contractor Lien within three days of the existence thereof, the Company may pay or discharge such lien and, upon the payment or discharge thereof, the Company shall be entitled to immediately recover from Contractor the amount thereof together with all expenses incurred by it in connection with such payment or discharge or to set off all such amounts against any sums owed by the Company to the Contractor.

## 20 Audits

- 20.1 The Company shall have the right to audit and have access at all reasonable time to all records, ledgers, invoices, expense receipts, cancelled cheques, notes, memoranda, files and other documents ("Account Records"), as well as the personnel necessary to audit any disbursements and miscellaneous charges payable to the Contractor. Any agreement entered into by the Contractor for services of any subcontractor or agent shall grant the same privileges to the Company. Any adjustments to the disbursements and miscellaneous charges payable hereunder arising out of any audit of Account Records shall be requested in writing within 12 months following receipt of the invoice containing such charges. Notwithstanding the foregoing, the Company's right to audit Account Records shall not extend to the composition of the Contractor's fixed rates and fees, standard charges and percentage multipliers.

## 21 Insurance

- 21.1 Without limiting the obligations as stated elsewhere in this Contract, unless the Company specifies otherwise in writing, the Contractor shall, at its own expense, prior to the commencement of the Work, obtain and hereafter maintain and keep in full force and effect for the benefit of the Contractor and the Company in relation to the Work, the following insurances with companies authorized to insure and/or provide indemnity or insurance in each jurisdiction where the Work are to be performed and the Keystone XL Project is located:

- (a) Comprehensive General Liability insurance having a minimum inclusive limit of not less than \$1,000,000 per occurrence, including personal injury and property damage. This policy shall include the following coverage extensions:
- (i) Contractual Liability;
  - (ii) Products/Completed Operations Liability to be extended for a period of 12 months from the date of the Company's final acceptance of the Work;
  - (iii) Cross Liability / Severability of Interest Clause;
- (b) Employer's Liability Insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury and disease;
- (c) Automobile Liability Insurance on all owned and non-owned vehicles used in connection with the Work with an inclusive limit of not less than \$1,000,000 per accident in respect of bodily injury (including passenger hazard) and property damage;
- (d) Aircraft liability insurance, if aircraft are involved, on all owned and non-owned aircraft (including helicopters) used in connection with the Work with an inclusive limit of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, property damage and passenger hazard liability;
- (e) Professional Errors and Omissions Liability insurance for protection from claims arising out of the performance or non-performance of the Work under this Contract caused by or arising from any error, omission or act of the Contractor, its employees, agents, contractors or subcontractors, for an amount not less than \$1,000,000;
- (f) Where applicable, Workers' Compensation insurance in a form and amount acceptable to the appropriate governmental authority;
- (g) Adequate insurance in respect of loss or damage to the Contractor's equipment;
- (h) Personal insurance as may be required for Contractor's directors, officers, employees, agents, servants, invitees, contractors, subcontractors, or any other party for whom the Contractor is responsible, including but not limited to the following:
- (i) medical and dental insurance and/or expense reimbursement;
  - (ii) life insurance;
  - (iii) accidental death and dismemberment insurance (including repatriation); and
  - (iv) disability insurance; and
- (i) Any additional or other insurance that, firstly may be required from time to time by any act, regulation or by-law, whether federal or otherwise or, secondly, as the Company may deem necessary.

The aforementioned amounts are in United States of America Dollars and all stipulated insurance coverage shall cover the Work performed by, through or for the Contractor in each jurisdiction where all or part of the Work are to be performed and the Keystone XL Project is to be located. All insurance shall be with insurers that are rated A- or better by Best's Insurance Guide and Key Ratings, or if not rated by Best's Insurance Guide and Key Ratings, an equivalent rating from another nationally recognized rating agency of similar standing.

The insurance policies described in subparagraphs (a), (c) and (d) of this Article 21.1 shall name the Company as an additional insured with respect to the scope of Work under this Contract and each such insurance policy limits may be applied through primary, excess or umbrella policies held by the Contractor.

Prior to commencing the Work, the Contractor shall furnish to the Company an insurance certificate, in a form satisfactory to the Company, which confirms compliance with the insurance requirements of this Article 21.1 (collectively, the "Insurance Policies"). Policies of insurance shall apply as primary insurance with respect to this Contract and not in excess of, or contributing with, any insurance maintained by the Company and shall contain an endorsement which requires the insurers under the Insurance Policies to provide the Company with at least 30 days prior written notice before cancelling, terminating or materially altering the terms of such policies. The Contractor covenants that it shall not cancel, terminate or materially alter the terms of any of the Insurance Policies without giving the Company at least 30 days prior written notice.

Regardless of the requirements as to insurance set out herein, insolvency, bankruptcy or failure of any insurer of the Contractor or failure of any insurer to pay any claim that may arise shall not constitute a waiver by the Company of any of the provisions of this Contract.

- 21.2 The Contractor shall, at its cost and for the duration of this Contract, be registered and remain in good standing with the Workers' Compensation Board of the jurisdiction(s) in which the Work are being performed. If the Contractor fails to remain so registered, the Contractor shall and does hereby indemnify, defend and hold harmless the Company, its directors, officers, employees, agents, servants and invitees from and against all losses or expenses suffered or incurred by the Company, its directors, officers, employees, agents, servants and invitees arising from or connected with any personal injury, disability or death, however cause, to the Contractor's directors, officer, employees, agents, servants, invitees or subcontractors. The Contractor shall, when requested, provide the Company with evidence of the Contractor's registration with the appropriate Workers' Compensation Board or Workers' Compensation Insurance carrier or other such applicable authority or entity in respect of worker's compensation insurance.
- 21.3 Should the Contractor fail to provide or maintain, or cause to be provided or maintained, any of the insurance coverage required under this Article 21, the Company shall have the right, but not the obligation, to provide or maintain, or cause to be provided or maintained, such coverage at the Contractor's expense, either by direct charge or set-off.
- 21.4 Before permitting any subcontractor to perform any Work, the Contractor shall obtain a certificate of insurance from each such subcontractor evidencing that such subcontractor has obtained, from insurance carriers licensed to do business as required by applicable law, insurance in such amounts and against such risks as is prudent in light of the Work to be performed by such subcontractor commensurate with normal practices in the location where such Work is performed.

## 22 Change Orders

- 22.1 Any changes to the provisions of or documents constituting this Contract shall only be made by means of a change order given in writing by the Company, and accepted and signed by the Company and the Contractor (a "Change Order").
- 22.2 The Contractor shall not make or proceed with any additions, changes, alterations or omission to the Work to be performed hereunder, or perform extra work or supply or use additional materials of any kind unless a Change Order as described above, has been accepted and signed by the Company and the Contractor.
- 22.3 If any addition, change, alteration or omission authorized by a Change Order either increases or decreases the cost of the Work to the Contractor, or the time of performance of the Work, the additional amount payable by or credit to the Company, or the change in time for performance of the Work, shall be agreed between the Company and the Contractor.

## 23 Delays

- 23.1 After commencement, the Work shall be diligently performed by the Contractor until final completion. If the Contractor or any of the Contractor's subcontractors is responsible for a delay in the performance or progress of the Work, the Contractor shall, without additional cost to the Company, work overtime, acquire necessary additional equipment, hire additional manpower or perform other acts as may be necessary to avoid delay in the completion of the Work.

23.2 The Contractor shall review with the Company the DOS mandated schedule of deliverable dates and all associated trend/change order lists on a weekly basis and shall issue to the Company a monthly report detailing all trend/change order lists inclusive of all deliverable schedule impacts and cost impacts. Any changes to these deliverable dates, items and associated costs presented by the Contractor must be approved by the DOS Project Manager by issuance of a Change Order.

23.3 For the purposes of this Contract the term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, prohibition or prevention of law, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, and any other cause not due to the negligence or fault of or within the control of the party (or its subcontractors) claiming a suspension, which by the exercise of due diligence such party shall not have been able to prevent, avoid or overcome.

23.4 In the event that either party is rendered unable wholly, or in part, by force majeure to perform its obligations under this Contract, other than its obligations to make payments of money due hereunder, such party shall immediately give written notice to the other party, stating full particulars of such force majeure and the obligations which it is unable to perform and exercise diligence to mitigate the effects of such force majeure and resume performance of the affected obligations.

The non-performance of the party affected by such force majeure shall be permitted only during the period that such force majeure situation is in effect and only if the party relying on the force majeure provides the aforesaid written notice.

23.5 The obligations under this Contract of the party giving such notice shall be suspended during the duration of the delay resulting from such force majeure and the time for completion of the affected obligations shall be extended for a period equal to the duration of the delay. No extra compensation shall be payable to the Contractor as a result of such delay.

23.6 In the event of: (i) a strike, lockout or other labor disturbance against any other contractor or its subcontractors or any materialman or supplier or carrier which, in the opinion of the Company prevents or obstructs the performance of the Work; or (ii) an environmental disturbance which, in the opinion of the independent environmental consultants retained by the Company or in the opinion of any governmental agency responsible for the protection of the environment, necessitates a stoppage of the Work, the Company may shutdown the Work or any part thereof upon giving notice to the Contractor specifying the reason therefore. The period of shutdown shall continue until receipt by the Contractor of notice from the Company to recommence the Work.

The sole remedy for such shutdowns shall be an extension of time for the completion of the Work equivalent to the duration of the shutdowns. No extra compensation shall be payable to the Contractor as a result of such shutdowns.

## 24 Termination by the Company

24.1 The Company, upon notice to DOS, may, at its option and for any reason, terminate this Contract or any part thereof (hereinafter called the "Cancelled Work") upon three days notice to the Contractor in the manner set out in Article 30, whether or not the Contractor is in default.

24.2 Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits on account thereof and agrees that the sole remedy for such termination, unless otherwise specifically set out in such notice, shall be to receive the sum of the following:

- (a) all amounts due and not previously paid to the Contractor for that part of the Work performed or completed prior to the delivery of such notice and as specified by the Company for that part of the Work thereafter performed or completed; and
- (b) all other amounts directly arising out of the termination of the Work which, in the opinion of the Company, shall be reasonable.

**25. Default of the Contractor**

25.1 Should the Contractor commit any act of bankruptcy, or should it make a general assignment for the benefit of creditors, or should a receiver be appointed on account of its insolvency, or should it take advantage of any statute for the benefit of insolvent persons, or enter into any arrangement with its creditors, then the Company may at its option terminate the Contract.

25.2 Should the Contractor at any time:

- (a) refuse or neglect to supply properly skilled professionals, workers or materials and equipment of the proper quality or quantity; or
- (b) fail in any respect to perform the Work or any portion thereof in an efficient, workmanlike, skilled, careful or safe or environmentally competent manner to the complete satisfaction of the Company; or
- (c) fail to timely pay any of its subcontractors, suppliers, employees, or agents; or
- (d) fail to perform the Work in accordance with the project schedule or Change Orders to the project schedule as may be agreed to during the Term of this Contract; or
- (e) fail to comply with any applicable laws or any of the provisions of this Contract or any Change Order hereunder; or
- (f) make any representation or warranty which is not correct, accurate and complete; or
- (g) perform in bad faith;

then the Company may give notice in the manner set out in Article 30 to the Contractor stating the event in which the Contract is in default.

25.3 Should the Contractor fail to commence appropriate action to remedy the default referenced in Article 25.2 above within five days after receipt of such notice and then fails to remedy such default within an agreed to time period, which shall not in any event exceed 30 days then the Company shall have the right to:

- (a) provide labor, equipment and materials as may be required to remedy the default and to bill the Contractor for expenses, costs and damages so incurred or to set off against and deduct such amount due or to become due to the Contractor; or
- (b) terminate the right of the Contractor to proceed with the Work or any part thereof, regardless of its state of completion without prejudice to any claims or remedies that the Company may have hereunder.

25.4 In the event of termination pursuant to either Article 25.1 or 25.3 above, the Company and DOS, for the purpose of completing the Work shall have the right to take possession of and use all or any part of the records, Confidential Information provided by, through or for the Contractor and may finish the Work by whatever method it and the DOS Project Manager may deem expedient, including the hiring of any contractor(s) under such form of contract as the Company may deem desirable. The Contractor shall deliver to the Company and the DOS Project Manager all records, Confidential Information, governmental authorizations and other documents, data and information prepared in connection with the Work and shall provide the Company, its designee, and DOS any proprietary documents needed for completion of the Work.

25.5 In the event of termination pursuant to either Article 25.1 or 25.3 above, the Contractor shall only be entitled to compensation for that portion of the Work performed by the Contractor to the date of termination. However, all payments shall be suspended until the Work has been completed. The expenses of completing the Work together with any reasonable charge for administering such completion shall be charged to the Contractor, and such expenses shall be set off against and deducted by the Company from any monies which may be due or which may at any time thereafter become due to the Contractor. In case such expenses exceed the sum which would have otherwise been payable under the Contract, then the

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Contractor shall be liable for and shall pay the amount of such excess to the Company upon receipt of the Contractor's invoices therefor. The Company shall not be required to obtain the lowest bid for completing the Work but may make such expenditures as, in its sole judgment, will best accomplish the completion of the Work.

**26     No Waiver**

- 26.1 Any failure by the Company at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Contract shall not constitute a waiver of such terms or conditions, shall not affect or impair such terms or conditions in any way, or the right of the Company at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

**27     Remedies of Company**

- 27.1 To the fullest extent permitted by applicable law, remedies provided to the Company and DOS under this Contract shall be cumulative and in addition to and not in substitution for any rights or remedies provided by law or in equity. The Company may, without prejudice to any right or remedy it may have at law or in equity, terminate this Contract and take possession of all Records, materials, data and Confidential Information, subject to Paragraph 44.1.

**28     Assignment**

- 28.1 This Contract and its rights and obligations of the Contractor hereunder shall not be assigned, subcontracted, mortgaged or hypothecated by the Contractor without the prior written consent of the Company and DOS.
- 28.2 The Company, upon notice to DOS, may assign this Contract and its rights and obligations hereunder without the consent of the Contractor and the Contractor agrees, upon request by the Company, to enter into an assignment and novation agreement (on terms to be specified by the Company) to give effect to such assignment by the Company.

**29     Dispute Resolution**

- 29.1 Except for matters requiring immediate injunctive or similar equitable relief, all claims, disputes or other matters in question between the parties arising out of or relating in any way to this Contract ("Disputes") will be resolved pursuant to this Article 32.
- 29.2 If a Dispute arises between Company and Contractor regarding the application or interpretation of any provision of this Contract, the aggrieved party will promptly provide notice of the Dispute to the other party within 30 days after such Dispute arises. Contractor will grant to Company audit rights with respect to all documentation pertaining to any Dispute sufficient to allow Company to investigate the Dispute. A meeting will be held promptly between the parties, to attempt in good faith to negotiate a resolution of the Dispute. If the Parties cannot succeed in negotiating a resolution of the Dispute, they agree to submit the Dispute to binding arbitration in accordance with Article 29.3.
- 29.3 (a) All Disputes that cannot be resolved by negotiation pursuant to Article 29.2 within 30 days after the Notice in Article 29.2 is given will be settled exclusively by arbitration pursuant to the then-current Arbitration Rules of the International Commercial Court and in accordance with any applicable legislation or regulations in the State of New York dealing with arbitration of commercial disputes.
- (b) Any party may commence an arbitration proceeding by serving a Notice (an "Arbitration Notice") on the other party (with a notice to the International Commercial Court in accordance with its rules) not more than 60 days after the expiration of the time period provided in Article 29.3(a) for the resolution of the Dispute by negotiation. The Arbitration Notice will contain a reasonably detailed description of the Dispute and the remedy sought. The party receiving the Arbitration Notice will, within 15 days after receipt thereof, deliver a notice (the "Reply Notice") to the party commencing

the arbitration. Each Reply Notice will contain a reasonably detailed response to the claim (including any counterclaims and remedies sought).

- (c) The parties to the Arbitration shall appoint an arbitrator within 20 days after delivery of the Reply Notice. In the event the parties to the arbitration are unable to agree upon an arbitrator within such time frame, the International Commercial Court will be requested to designate three potential arbitrators, each of whom (1) will have agreed to arbitrate the Dispute, (2) will be unaffiliated with any party to the Dispute or their Affiliates, (3) will be generally qualified by training or experience to address the issue in controversy, and (4) will be available to fulfill the responsibilities of the arbitration in a timely manner. Each party to the arbitration will be provided relevant information related to each potential arbitrator, including applicable fees; and each shall designate its first, second and third choices among the potential arbitrators, with the designated choice receiving four, three, and one point(s), respectively. In the event a party to the arbitration fails to designate an order of choice, each potential arbitrator shall receive one point. The potential arbitrator receiving the most points shall be the arbitrator; provided, however that if two potential arbitrators have the same number of points, the potential arbitrator with the least average deviation in the points assigned to him or her will be the arbitrator. The arbitrator will be entitled to a fee commensurate with his or her fees for professional services requiring similar time and effort. If the arbitrator so desires, he or she will have the authority to retain the services of a neutral judge or attorney (whose fees will be treated as an arbitrator's fees) to assist him or her in administering the arbitration and conducting any hearings and taking evidence at the hearings or otherwise.
  - (d) The Parties will have 90 days from delivery of the Reply Notice to perform discovery and present evidence and argument to the arbitrators, in accordance with a schedule proposed by the parties and approved by the arbitrators. The arbitrators will use all reasonable means to expedite discovery and will be available to resolve discovery disputes, and to sanction non-compliance with reasonable discovery requests. The arbitrators will receive and consider all such evidence as is relevant, within reasonable limits permitted by the restricted schedule, and will hear as much argument as is feasible, giving a fair allocation of time to each party. The arbitrators will not consider any evidence or argument not presented during such period and will not extend such period except by the written consent of both parties.
  - (e) Within 10 days after the end of the period prescribed in Article 29.3(d), the arbitrators will furnish to the parties a written determination on the matters in Dispute, which will contain such findings of fact and conclusions of law as may be necessary or appropriate in the circumstances. The arbitrators will have the right only to interpret and apply the terms and conditions of the agreement(s) in question in accordance with the laws of the Province of Ontario and may not change any such term or condition.
  - (f) Each Party will bear its own expenses (including attorneys' fees) with respect to the arbitration, unless the arbitrators decide on a different allocation of expenses. The arbitrators will designate the party to bear the expenses of the arbitrator or the respective amounts of such expense to be borne by each party.
- 29.4 Arbitration involving Third Parties. Arbitration arising out of or relating to this Contract or the Work may include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary, appropriate, or desirable.
- 29.5 Continued Performance. During the continuation of any dispute arising under this Contract, so long as the dispute resolution procedure selected for resolution of such disputes is continued by both parties in good faith, the parties shall continue to perform their respective obligations under this Contract including prompt and timely payment of all amounts due hereunder until a final non-appealable resolution is reached.
- 30 Notices
- 30.1 All notices and communications hereunder shall be in writing and may be given or made by personal service or by prepaid telecommunication to the parties at the addresses listed below. Notices and communications made by personal service shall be deemed to have been given when so served, and if transmitted by telecommunication shall be deemed to have been received six hours after the transmission thereof.

The addresses for the parties hereto, which may be changed by notice to the other party, shall as of the date of this Contract be:  
The Company at:

TransCanada Keystone Pipeline, LP  
450 - 1<sup>st</sup> Street SW  
Calgary, Alberta, Canada T2P 5H1

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

B-4

The Contractor at:

ENTRIX, Inc.

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

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**31 Governing Law**

- 31.1 This Contract shall be interpreted in accordance with the substantive laws of the State of New York, United States of America without application of principles of conflicts of laws.

**32 Conflict of Law**

- 32.1 If any provisions of this Contract are invalid under any applicable statute or rule of law, they are, to that extent, omitted, but the remainder of this Contract shall continue to be binding upon the parties hereto.

**33 Priority of Documents**

- 33.1 In the event of any conflict between any of the provisions of the Contract documents and any of the Schedules of this Contract, the provisions of the Contract documents shall prevail.

**34 Entire Agreement**

- 34.1 This Contract embodies the entire agreement between the Company and the Contractor with respect to the Work and no other understandings or agreements, verbal or otherwise, exist.

**35 Time**

- 35.1 Time shall in all respects be of the essence of this Contract provided that the time for doing or completing of any or all of the Work provided for herein may only be extended or changed by a Change Order signed by the Company and the Contractor.

**36 Other Documents**

- 36.1 The Contractor agrees to execute and deliver such other additional instruments and documents, provide such data and information and to do or refrain from doing such other acts as may be reasonably necessary to effectuate this Contract or which would be reasonably requested by the Company for the development, permitting, financing, design, engineering, construction and operation of the Keystone XL Project.



- 36.2 The Contractor shall ensure that all necessary provisions of this Contract as they may apply to the Contractor's employees, subcontractors, contractors, agents, and others providing Work pursuant to this Contract, are included in any subcontracts or other arrangements with such parties.

37 Headings

- 37.1 The insertion of headings to the provisions hereof are for convenience of reference only and shall not be used to construe or interpret this Contract or any portion thereof.

38 Survival Provisions

- 38.1 Notwithstanding any termination of this Contract, the Contractor shall continue to be bound by all terms of this Contract in respect of all obligations or events which arose or occurred prior to the date of termination hereof and with respect to indemnity, remedies, confidentiality, choice of law and resolution of disputes.

39 Mutually Prepared Contract

- 39.1 The Contractor and the Company agree that this Contract and the Contract documents have been prepared through their joint efforts, that both parties are sophisticated parties, and that this Contract and the Contract documents should not be construed against either party based on the party which prepared the initial or any subsequent draft or the execution version of the Contract or Contract documents.

40 Amendments

- 40.1 No change, amendment, or modification of this Contract shall be valid or binding upon the parties hereto unless such change, amendment or modification shall be in writing and duly executed by both parties hereto.

41 No Third Party Beneficiaries

- 41.1 Unless otherwise expressly provided herein, no person except DOS shall be deemed a third-party beneficiary of any provision of this Contract.

42 Successors and Assigns

- 42.1 This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

43 Counterparts

- 43.1 This Contract and any Change Order hereunder may be executed in any number of counterparts, all of which, when taken together, shall constitute one and the same instrument and any of the parties hereto may execute this Contract by signing any such counterpart. Any party hereto may evidence its execution of this Contract by providing the other parties with an executed counterpart by means of facsimile transmission, telecopy or other similar means of electronic communication and any counterpart provided as aforesaid shall bind the party providing same in the same fashion as if such party had provided an originally executed counterpart provided that an executed original promptly follows.

44 Ownership of Work

- 44.1 All original drawings, plans, specifications, calculations, sketches, designs, reports, files (electronic or otherwise), records and other documents regardless of the media or means of storage and access thereto ("Records") developed by, through or for the Contractor pursuant to this Contract or any Change Order shall be the absolute property of the DOS. The Company shall be entitled to duplicates of all such Records. The

Records shall be delivered to the DOS upon completion of the Work or at any time during performance of the Work at the request of the DOS. The Contractor may use the Records related to its services expended on behalf of the Company related to the Work for its general reference and enhancement of its Work, but shall not market or sell the Records without the prior written consent of the DOS and the Company.

IN WITNESS WHEREOF the Company and the Contractor have executed this Contract as of the day and year first above written.

TransCanada Keystone Pipeline, LP,  
by its general partner,  
TransCanada Keystone Pipeline GP, LLC

ENTRIX, Inc.

Per:

Name:

Title:

Per:

Name:

Title: Senior Vice President

Per:

Name:

Title:

Per:

Name:

Title:

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ORIGINATOR	SCM	BUSINESS	LEGAL	INS. RISK	COM. RISK	QUALITY